XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

मामला क्रमांक M.A. 981 सन् 2004

आदेश पत्रक (पूर्णानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 981/2004

APPELLANT INSURER National Insurance Co. Ltd., through it's Branch Manager, Branch Office, Bilaspur (Chhattisgarh)

Versus

RESPONDENTS (DRIVER) 1. Manish Rao alias Pattu, S/o Krishna Rao Todekar, aged about 29 years, R/o Nagar Nigam Colony, Raipur Naka, Bilaspur, P.S. Civil Lines, Dist. Bilaspur (Chhattisgarh)

OWNER (TRACTOR) 2. Navbharat Udyog Bhawan Ring road No.1, Near Rly. Raipur Naka, Bilaspur thru' Ravindra Shrivastava, S/o Mohan Lal Shrivastava, R/o Gondpara, Tahsil & District Bilaspur (Chhattisgarh)

RESPONDENT (CLAIMANT) 3. Sheetal Das Jangde, S/o Shri Chet Ram Jangde, aged about 36 years, R/o Dighora, Police Station Hirri, Dist. Bilaspur (Chhattisgarh)

Present:

Shri Sourabh Sharma, counsel for the appellant.
Shri Rakesh Pandey, counsel for respondents No. 1 & 2.
Shri Bhupendra Singh, counsel for the respondent No. 3.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

04.05.2007

Dhirendra Mishra, J.

The appellant/non-applicant No.3, Insurance Company, has preferred this appeal against the award dated 10.8.2004 passed by 3rd Additional Motor Accident Claims Tribunal, Bilaspur Claim Case No. 05/2003, whereby the learned Tribunal has awarded a sum of Rs.86,000/- to respondent No.3/claimant Sheetal Das Jangde towards the injury sustained by him in a motor vehicle accident dated 3.10.2002 when matador No. C.G.-04-ZB-2187 rashly and negligently driven by respondent No.1 and owned by respondent No.2 dashed against the bicycle of respondent No.3/claimant.

The only argument advanced by learned counsel for the appellant is that the vehicle in question was explosive van as per Central Motor Vehicle Rules, 1989 (for brevity 'Rules, 1989'). Rules 9 of Rules, 1989 prescribes educational qualification for drivers of goods carriages carrying dangerous or hazardous goods and Rule 135 of Rules 1989 further cast a duty upon the owner of goods carriage transporting dangerous or hazardous goods to ensure to the satisfaction of the consignor that driver of the goods carriage has received

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

adequate instructions and training to enable him to understand the nature of the goods being transported, by him, the nature of the risks raising out of such goods, precautions he should take while the goods carriage is in motion or stationary and the action he has to take in case of any emergency.

It is submitted by counsel for the appellant that specific objection was raised before the learned Tribunal that the vehicle in question was specified type of vehicle and driver of the vehicle has admitted in his cross-examination that he did not have the requisite endorsement in his driving licence that he was competent to drive such type of vehicle and he has further admitted that the vehicle in question was handed over to him by owner of the vehicle. However, this objection has been rejected on the ground that at the relevant time the van was not carrying any hazardous or dangerous goods (explosives)

Placing reliance on the judgment in the matter of **National Insurance Co. Ltd. Vs. Kusum Rai and others** reported in **2006 ACJ 1336,** it is argued by counsel for the appellant that where the driver did not possess a valid licence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

to drive a commercial vehicle, the insurance company may recover the amount paid from the owner by initiating proceedings before the executing Court.

On the other hand, learned counsel for the respondent No.3/claimant submits that though the vehicle was explosive carriage but at the time of accident admittedly it was not carrying explosives and it was empty. He further submits that there is no evidence available on record that the accident occurred due to reason that driver of the vehicle was not possessing the requisite endorsement on his licence necessary for driving explosive van and in these circumstances, the insurance company cannot avoid its liability of satisfying the compensation.

I have heard learned counsel for the parties and perused the material available on record.

Facts are not disputed. It is also not in dispute that driver was possessing L.M.V licence for non-transporting vehicles, however, there was no endorsement in the licence that he was competent to drive explosive van. From perusal of Section 10 of the Motor Vehicle Act, 1988 learners licence

concerning driving licence.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

or driving licence may be issued to drive the motor vehicle of one or more of the classes mentioned in this section. However, explosive van has not been described as a particular class of vehicle. Section 10(2)(j) mentions 'motor vehicle of specified description'. It appears that explosive carrying van is a type of vehicle of specified description as mentioned in Section 10(2)(j) of the Act. The relevant rule referred to by learned counsel for the appellant envisages that Rule 9 of Rules, 1989 prescribes educational qualification for drivers of goods carriage carrying dangerous or hazardous goods whereas Rule 135 cast a duty upon owner of every goods carriage transporting dangerous or hazardous goods that he shall ensure to the satisfaction of the consignor that driver of the goods carriage has received adequate instructions and training to enable him to understand the nature of the goods being transported, by him, the nature of the risks raising out of such goods, precautions he should take while the goods carriage is in motion or stationary and the action he has to take in case of any emergency.

In the admitted premises, at the time of accident the vehicle in question did not carry any explosive or hazardous goods, therefore, lack of endorsement in the driving licence of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the driver of the vehicle that he was licensed to carry a specified type of vehicle, cannot be presumed to be a contributory reason for causing accident.

In the matter of Kusum Rai (supra) in paragraph 12 of the judgment while considering the liability of the owner *vis-à-vis* the driver being not possessed of a valid licence and the insurance company, judgment in the matter of National Insurance Co. Ltd. Vs. Sawarn Singh and others, 2004 ACJ 1 (SC) has been referred, wherein it has been held that where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence, in such cases on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

If we examine the case in hand in the light of the judgment relied upon by counsel for the appellant rendered in the matter of Kusum Rai (supra) in which the judgment in the matter of Swaran Singh has been referred to with approval, we find that it is incumbent upon the insurance company to demonstrate from the evidence available on record that accident occurred because driver of the vehicle did not possess the particular type of licence required for driving the vehicle and it was contributory cause for the accident. As already mentioned in the foregoing paragraphs that the vehicle in question was not carrying explosives at the time of accident, there is no evidence available on record to show that the accident occurred because the driver did not possess endorsement in his licence that he was competent to drive explosive vehicle and this fact was indeed contributory cause for the accident. In these circumstances, the insurance company cannot avoid its liability simply because of technical breach of the licence conditions.

In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge